



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report A-2023-007**

**February 16, 2023**

**City of St. John's**

**Summary:**

The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* to the City of St. John's for all records (applications, permits, correspondence, complaints, etc.) relating to a number of addresses in St. John's. The City provided a large number of records, but redacted some information, particularly the names of property owners, on the basis of section 40(1) (unreasonable invasion of privacy). The Complainant objected to the redactions and filed a complaint with our Office. The Commissioner concluded that, while the City's redactions were not unreasonable, the better practice would have been to disclose the names of the property owners and the names of other individuals in certain legal documents as they are otherwise publicly available or intended to be public; and to then ensure compliance with section 40 of the *Act* by redacting other information if its disclosure, coupled with the names, would be an unreasonable invasion of privacy. The Commissioner recommended that the City continue to withhold most of the redacted information in the present case, but that it should adopt the alternative practice in similar future cases.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL2015, c. A-1.2, s.40.  
[Registration of Deeds Act](#), SNL2009 c.R-10.01, sections.11, 14-19, 22, 30.  
[Lands Act](#), SNL1991 c.36, sections.7, 37, 67.  
[Municipalities Act, 1999](#), SNL1999, c.M-24, section 215.  
[City of St. John's Act](#), RSNL1990, c.C-1.  
[Assessment Act, 2006](#), SNL2006, c.A-18.1, section 27.

**Authorities Relied On:**

NL OIPC Reports [A-2020-022](#) and [A-2020-030](#).

## BACKGROUND

- [1] The Complainant made a request under the *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*” or “the Act”) to the City of St. John’s (“the City”) for all records (applications, permits, correspondence, complaints, etc.) relating to a number of addresses in his neighbourhood in St. John’s. The City provided a large number of records, but redacted some information on the basis of section 40(1) (unreasonable invasion of privacy). The Complainant objected to the redactions and filed a complaint with our Office.
- [2] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY’S POSITION

- [3] The City argues that disclosing the names of individuals associated with property files is a concern because of the mosaic effect: a situation in which information in an individual dataset, in isolation, may not pose a risk of identifying an individual, but when combined with other available information could pose such a risk. In the present case, if owner names were to be withheld in part of the record and disclosed in others, the applicant could cross-reference records to determine what names had been redacted.
- [4] The City also cites the conclusions in our Report A-2020-030, in which our Office recommended that addresses about which the municipality had received noise complaints be redacted by removing the house numbers, in order to protect the privacy of the residents.

## COMPLAINANT’S POSITION

- [5] The Complainant states that there is much redaction from emails using section 40 that the Complainant believes to be contrary to his rights. The Complainant submits that if an individual chooses to make complaints or recommendations or ask questions about another person’s property, then that Individual should do so with the knowledge it is public record.

[6] The Complainant also states that information has been redacted contrary to section 40(5)(c) (the personal information is relevant to a fair determination of the applicant's rights). In particular, the Complainant alleges that there has been false information provided to the public body which is currently making decisions regarding his applications for permits and other business.

## ISSUES

[7] The sole issue to be dealt with in this Report is whether the section 40 exception was properly applied. This however involves the discussion of a number of specific subjects:

- whether some information is already in the public domain (for example in the provincial Registry of Deeds), in other public records, or in the City's own municipal assessment rolls;
- whether some information is intended to be public, such as the identity and other personal information of individuals who have made an affidavit or are parties to a bill of sale;
- whether section 40(5)(c) applies so as to favour disclosure;
- whether other provisions of section 40(5) favour withholding personal information, and
- whether there are any additional considerations that favour specific recommendations for the present case.

## DECISION

[8] Section 40(1) requires personal information to be withheld if its disclosure would be an unreasonable invasion of privacy:

*40.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[9] Section 40(2) provides numerous circumstances in which a disclosure of personal information is deemed to not be an unreasonable invasion of privacy. None of these circumstances, however, are directly at issue in the present case.

[10] Section 40(4) provides circumstances under which a disclosure of personal information is presumed to be an unreasonable invasion of privacy – but such a presumption may be rebutted through the application of section 40(5) which reads:

- (5) *In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether*
- (a) *the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;*
  - (b) *the disclosure is likely to promote public health and safety or the protection of the environment;*
  - (c) *the personal information is relevant to a fair determination of the applicant's rights;*
  - (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;*
  - (e) *the third party will be exposed unfairly to financial or other harm;*
  - (f) *the personal information has been supplied in confidence;*
  - (g) *the personal information is likely to be inaccurate or unreliable;*
  - (h) *the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;*
  - (i) *the personal information was originally provided to the applicant; and*
  - (j) *the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.*

Under subsection 40(5), a public body, in determining under subsections (1) or (4) whether a disclosure constitutes an unreasonable invasion of personal privacy, must consider all the relevant circumstances. Some of the provisions of section 40(5) will be discussed below.

[11] As in any large city, the City of St. John's holds a large number of records relating to residential or commercial properties within its boundaries. Many of those records are

organized, logically, by street address. They include files from the Planning, Engineering, and Regulatory Services Department involving, for example, permits, applications, and by-law enforcement records. They might also include such documents as assessments, appeals, plans, and correspondence relating to those and other matters. Such files may also include correspondence such as complaints about City services, or about noisy neighbours. And of course many such records will necessarily include the names of persons, especially those of owners of properties.

### Information Already in the Public Domain

[12] Where a record includes the personal name or other identifying information associated with a property address that will mean, therefore, that much other information in the record is “personal information” because personal information is defined, in section 2(u) of the *Act*, as “recorded information about an identifiable individual”. When a public body receives an access request for such records, it must examine each record, line-by-line, to determine what personal information, if any, can be disclosed, and what must be withheld on the basis that to disclose it would be an unreasonable invasion of privacy.

[13] However, some personal information in a record may already legitimately be in the public domain and therefore available to anyone. Disclosure in response to an access request of information that is already publicly available through legitimate means would generally not fall into the category of an unreasonable invasion of privacy.

[14] Arguably some of the redacted information in the responsive records in the present case, and in other similar cases, is already public or is by its nature intended to be public, and is neither particularly sensitive nor highly confidential. Some pertinent examples follow.

[15] Under the legal framework governing real property in this province, including the common law, the *Registration of Deeds Act* and the *Lands Act*, records such as bills of sale, property deeds and mortgages are instrumental in determining who owns real property or which of competing claims may be valid or take precedence. Under the *Lands Act*, the occupation of property must be open and notorious, not secret, in order to ground a claim. Applications for

squatter's rights have to be published, and grants, licenses, leases, surveys, and easements are open to inspection by members of the public.

[16] Under the *Registry of Deeds Act*, registration of an instrument constitutes legal notice to adverse claimants and so must be public; and instruments, to be registered, must identify the parties. Any member of the public can search the Registry. The effect of this legislation is that, in the vast majority of cases, it is possible to obtain the name of the person who is the owner of property at a particular address.

[17] There are other statutory provisions that apply directly to some of the information at issue. Section 215 of the *Municipalities Act* does not apply to the City, as it has its own legislation, but it is illustrative and the City essentially follows the same practices. Under those provisions, numerous records held by municipalities in the province, including minutes of council meetings, assessment rolls, plans, tenders, contracts, permits, and more, are required to be available to the public.

[18] Under section 27 of the *Assessment Act* (which applies to the City and all other municipalities), municipal tax assessment rolls, which must contain the address and the name of the owner of the property, are publicly available, either at the municipality or at the Assessment Agency itself. The City typically redacts the mailing address of the property owner but the name of the property owner, the assessed property address, and the assessed value are disclosed.

[19] What this means is that for most residential properties in the City and in other municipalities, it is legitimately and routinely easy to find out the name of the owner of a particular address. In other words, names of property owners in such cases are public information. It cannot, therefore, be an unreasonable invasion of privacy to disclose that information in response to an access request.

[20] The conclusions in Report A-2020-030 cited by the City are in fact consistent with this approach. One could use an address (along with other information contained in the noise complaint) and with a simple internet search potentially identify the residents. Therefore our

Office in that case recommended the redaction of the street numbers, disclosing only the street names associated with the complaints.

[21] Development applications received by the City are filed by address and the file may contain not only the name of the owner, but contact information such as email addresses and phone numbers and much other personal information as well. While disclosure of that other information may be found to be an unreasonable invasion of privacy, disclosure of the name of the owner would not be. In fact, a building permit granted to an owner, containing the name, is typically required to be publicly posted on the property.

[22] Development files may also contain surveys, diagrams, construction plans or photographs that show the names of the owners or occupiers of the subject address, and also of adjoining properties. These names would, as indicated above, be available elsewhere, such as in the Registry of Deeds or in assessment rolls, and so they constitute public information.

[23] Finally, many, if not all, of the names of the owners or occupiers of specific addresses in most municipalities can be found in the telephone directory or even more easily in its online equivalent. For all of these reasons, the names of the owners of residential properties must be considered public information, and therefore cannot be withheld in response to an access to information request.

#### **Other Types of Personal Information Intended to be Public**

[24] There are other types of personal information that may be found in records in the present case, or in similar cases involving the records of other municipalities, or of provincial government departments and agencies. For instance, affidavits or other documents containing the names and signatures of witnesses are not uncommon. Those names and signatures are obviously personal information. But disclosure of that information is essential to the legal purpose of an affidavit. Such a document has no value as evidence unless its provenance can be assessed and tested. It is necessarily the intention of a person who made or witnessed an affidavit that it be relied upon in a legal proceeding. Therefore it was intended to be a public record.

[25] Property records may include a bill of sale or conveyance which, of course, always contains the names of the buyer and seller and other personal information. Such a document may or may not be registered in the Registry of Deeds. Yet the first line of a typical Bill of Sale states: “I do hereby proclaim and make known to all and sundry...” There could be no better evidence of intention to make a public declaration.

[26] Those are all examples of records that are often the subject of access requests. In such cases, the public body must devise an effective method of disclosing the maximum amount of information possible while withholding information that should not be disclosed. In particular, protecting the privacy of individuals is of the highest importance.

### **Best Redaction Practices**

[27] One common practice of public bodies to resolve the personal privacy issue is to simply redact all of the names of the individuals contained in a particular record. Logically, that means that none of the other information in the record constitutes personal information, because personal information is defined as information about an identifiable individual, and the record has been “de-identified” by removing personal names. In many circumstances, such an approach is not only effective but has the merit of disclosing as much of the contents of a record as possible, since only one or several names are redacted.

[28] However, while such an approach is not unreasonable in many circumstances, it will not be effective where the record can be linked with a person’s name by other means. This is the “mosaic effect” referred to by the City in its submissions.

[29] The City argues that while names of property owners or occupiers, as well as some other information, may be known or available elsewhere, obtaining such information requires some effort and disclosure is therefore effectively somewhat limited. The City argues that disclosure in response to an access request should similarly be limited, in order to make it more difficult for anyone to combine information from different sources and thereby indirectly obtain and compile more personal information.



[30] However, making it only more difficult for personal information to be compiled and disclosed may not be enough to comply with the Act. We have concluded that for the kinds of municipal property records involved in the present case and other similar cases, a different practice is recommended. With such records, it is our view that the better practice will be first to recognize and accept that the names of the owners of residential properties are already, irrevocably, in the public domain. The coordinator should therefore start by not redacting the names from such records. Then, the coordinator can proceed with the line-by-line review that will be necessary to recognize other personal information in the record (that is, information about individuals, not information about the property). The public body may need to redact such personal information if its disclosure would constitute an unreasonable invasion of privacy.

[31] We recognize, of course, that the judgment calls involved in such line-by-line review are not always easy and it can be a laborious exercise for even the most experienced of coordinators. However, a practice that attempts to comply with the privacy provisions of the Act without recognizing that the names of property owners are already in the public domain cannot, ultimately, be effective.

[32] Similar practices should apply to records such as conveyances, bills of sale or affidavits. In those cases, the task is easier, since the entire record is a legal document that is intended to be public. Therefore no redaction of personal information is necessary.

#### **Application of Section 40(5)**

[33] The Act requires, under subsection 40(5), that a public body, in determining under subsections (1) or (4) whether a disclosure constitutes an unreasonable invasion of personal privacy, must consider all the relevant circumstances, including but not limited to the factors listed in the subsection. Several such factors or circumstances need consideration here.

[34] The first circumstance, of course, is the fact that some personal information is already in the public domain, as discussed above, and that will affect whether or not other information may be disclosed or must be withheld.

- [35] Section 40(5)(a) asks whether the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny. The Complainant has provided no evidence that there is any issue with the City upon which it is desirable to shed light. We conclude that this factor does not apply.
- [36] Section 40(5)(c) - the Complainant has argued that the information is relevant to a fair determination of his rights, because “there has been false information provided to the public regarding the applicant.” The Complainant has not, however, provided any evidence to support the allegation or elaborate on what rights may be affected. Without evidence, we cannot conclude that this factor applies.
- [37] Sections 40(5)(e) and (f) question whether the party whose personal information is at issue will be exposed unfairly to financial or other harm and whether the personal information has been supplied in confidence. Those are important considerations that may favour withholding of information about complaints that have been made to the City, in particular complaints made about other residents, though not necessarily complaints made about the actions or omissions of the municipality.
- [38] Correspondence involving complaints are a particular concern, especially when they are not about something the City has done or omitted to do, but are about the actions of neighbours or other individuals. This is particularly acute where there is a known history of controversy or conflict or where the complaints are alleging serious interference with the rights or the lives of others. A concern about retaliation for such complaints then may become a reasonable factor to consider and the public body may wish to take extra care to ensure that information that could be linked with an identifiable complainant is appropriately redacted.
- [39] In such cases, “appropriately redacted” may mean taking into account the extent to which communications are intended to be confidential. In many cases a complaint may be about objective facts or conduct that can be investigated independently and remedied, without ever disclosing the identity of the complainant. If existing conflict or the nature of a complaint increases the likelihood that identifying the source would likely lead to increased conflict or retaliation, then that would be a factor that strongly favours withholding statements or

opinions about other individuals, where there is a risk of identifying the maker of the complaint.

## CONCLUSIONS

[40] Given all of the above, it is our conclusion that in these circumstances the proper application of section 40, including the balancing of interests under section 40(5), favours the disclosure of the names of property owners, as well as the names of parties or witnesses to legal documents. The disclosure of those types of information, in the type of circumstances referred to above, does not constitute an unreasonable invasion of privacy.

[41] Signatures are a different matter. In some instances an individual's signature, for example the signatures of witnesses to a legal document, are by their nature intended to be public; in other cases they are not. Given the risk of identity theft, and for the sake of consistency, we recommend that in most cases signatures ought to be uniformly redacted by public bodies, leaving to the courts the small subset of cases in which the circumstances may require the disclosure and verification of signatures for legal purposes (see, for example, Report A-2020-022).

[42] We considered, therefore, recommending that the City disclose to the Complainant additional information, including the names of property owners, previously redacted under section 40(1) in the development application and property files. However, in accordance with its present practice the City has already disclosed to the Complainant much information in those records and it may be that some such information would properly be withheld if it was to be linked with the name of an individual. Now, disclosing the names previously redacted from such records may obviously provide that linkage. The circumstances of the present case therefore require a tailored solution.

[43] We have decided that in the present case we will not recommend that level of disclosure. Rather, we will limit the remedy in the present case to recommending disclosure of information that does not involve the risk of now creating an unreasonable invasion of privacy by doing so. For example, the names of parties or witnesses to legal documents (not including signatures) and the names of property owners on maps or diagrams could be disclosed.

## RECOMMENDATIONS

[44] Under the authority of section 47 of *ATIPPA, 2015*, I recommend that the City of St. Johns:

1. In the present case, continue to withhold the information redacted from the responsive records under section 40(1) of the *Act*, with the exception of
  - (a) the names of parties or witnesses to legal documents, and
  - (b) the names of property owners on maps or diagrams which should be disclosed to the Complainant.
2. In future, amend its practices, as outlined above, to disclose information that is publicly available, or which by its nature is intended to be public, when doing so would not result in a disclosure through the mosaic effect of other personal information that would result in an unreasonable invasion of privacy.

[45] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of the City of St. John's must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[46] Dated at St. John's, in the Province of Newfoundland and Labrador, this 16<sup>th</sup> day of February 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador